

Diego with prejudice, or as the Court deems appropriate, pursuant to Federal Rule of Civil Procedure 12(b)(6).

This Motion shall be based on the Points and Authorities in support thereof, and the following:

1. Dismissal of Plaintiff's pendent claim(s) against the City of San Diego and its San Diego Police Department is appropriate, where the claim(s) are barred for failure to plead and show compliance with California's Government Code.
2. To the extent Plaintiff seeks to assert claim(s) under California's Penal Code, dismissal of the claim(s) is appropriate where the Penal Code does not create enforceable individual rights.
3. To the extent Plaintiff seeks to assert any new claim under 42 U.S.C. § 1983, against the City of San Diego or the San Diego Police Department, dismissal is appropriate where the claim is time-barred by the two year statute of limitations and where Plaintiff fails to state a claim.
4. Dismissal of Plaintiff's action(s) against the San Diego Police Department and the City of San Diego is appropriate, upon Plaintiff's failure to state a claim upon which relief may be granted.
5. Plaintiff's claims against the San Diego Police Department and the City of San Diego accrued on March 9, 2006.
6. Plaintiff's conduct shows his ability to commence and prosecute this action while incarcerated, and Plaintiff cannot show any legitimate excuse to avoid application of California Code of Civil Procedure section 335.1 to his action against the San Diego Police Department or the City of San Diego.
7. The action against the San Diego Police Department or the City of San Diego for the March 9, 2006, event(s) at issue, are not actionable if time barred.

The Motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities in support of the Motion, the Plaintiff's First Amended Complaint on file in this Court, any matters to which the Court may take judicial notice, the orders, pleadings, and papers filed herein, and such arguments and evidence as may be presented to the Court at the time of the hearing and/or any oral argument made on the Motion.

Dated: July 29, 2008

MICHAEL J. AGUIRRE, City Attorney

By /s/ Wendy Davisson
Wendy E. Davisson

Attorneys for Defendants
Dennis Wilson; Esmeralda Tagaban; Griffin;
Lemus, San Diego Police Department and
City of San Diego

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